WORLD COURT AND LEAGUE OF PEACE

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A realization of the unintelligent methods by which nations regulate their relations with each other, and the waste and danger of competition in armaments, led to the call for an international conference which met at The Hague in 1900. No progress whatever was made at the conference on the question of disarmament, for which primarily the gathering was called. But there did emerge from it new institutions, not looked for, which were a real gain to the world. I refer first of all to the Permanent Court of Arbitration, which has decided several difficult questions, among them the Casa Blanca Affair between France and Germany, at one time quite acute. There emerged also an International Commission of Inquiry which, in 1904, proved of the highest value. You will remember that the Russian Admiral Rodjesvensky, emerging from the Baltic, thought that he discovered an enemy in some innocent English fishermen. He attacked them, sank a ship and killed several men. Now, in the minds of many men that incident might have led to war the next day—a generation before it would undoubtedly have led to war. But there happened to have been set up by the First Hague Conference this institution, the Commission of Inquiry. The question was referred to it and it was found that Rodjesvensky, however foolishly, still honestly believed he saw in these fishermen Japanese warships. Moreover, time was given for national passion to subside. As a result there was no war between Russia and England. Then, too, at the First Hague Conference, good offices and mediation were recognized for the first time as friendly functions. It was agreed that if a country should tender its good offices to two countries on the verge of war, or at war, this act should not be regarded as unwarranted interference but as a friendly act. It was under this institution that Mr. Roosevelt succeeded in bringing Japan and Russia together at Portsmouth and so terminating, earlier than would otherwise have been the case, the Russo-Japanese War.

A second peace conference took place at The Hague in 1907. The task of improving the rules of war which had been begun at the first conference was carried forward at the second conference. The second congress, moreover, adopted in fact an institution known as the International Court of Prize. Then it adopted in principle the Court of Arbitral Justice, intended to be a true international court of justice, composed of judges by profession, whose tenure should be permanent. This latter institution was to be brought into being through diplomatic channels as soon as the nations should agree upon a method of selecting the judges. The reason the court is not in existence today is that up to this time such a method of selecting the judges has not been found.

Now, why did the Second Hague Conference vote for this Court of Arbitral Justice when we already had in existence, working successfully, the Permanent Court of Arbitration set up by the First Hague Conference? The reasons were several. In the first place, the Permanent Court of Arbitration was not a true court. Its decisions were to be based upon the principles of law but at the same time its functions were those of arbitration; and, as you know, the main object of the arbitrator is to bring about the settlement of a dispute; that is to say, he is more interested in that which often involves compromise, than he is in bringing out the true justice of the case, that which would tend to develop the principles of law and enlarge accepted practice.

Now, those of us who believe in this true court of justice for the world feel that international law would be built up by it in two ways. First, it would grow through the decisions of the judges themselves in cases actually coming before them, the judges being governed by previous decisions of the court—the way in which the great Common Law of England has grown. That process produces the most natural, healthy, sound, and permanent kind of law. Then it is felt that the existence of this court will invite the codification of certain spheres of law. An example in point is the way in which the provision for the International Court of Prize led to the London Conference of 1908–1909, at which the law of prize was codified. England declined to proceed with the project of the International Prize Court until that was done. Hitherto the law of prize has depended upon the interpretation each nation has placed upon it. One nation might set up as contraband that which another nation

declined to accept as contraband. Questions of how long an enemy's ship should be suffered to remain in a neutral port, whether merchantmen may lawfully be converted into armed cruisers after leaving home waters, and numerous similar questions, were differently answered by different countries. England said "we must know what we are undertaking." Therefore, at her instance, the conference met at London and evolved the London Convention which codifies the law of prize. When the present war began, Germany announced her willingness to accept the Convention. On the other hand, England, who had not yet ratified the Convention (owing to the opposition of the Lords), proceeded to modify it and proclaimed it in this modified form. France did the same. It was accepted in its original form by the United States Senate but not promulgated by the President, who took the position that the United States could not accept a convention in which several nations had introduced their own amendments not agreed to by all. But the history of the London Convention shows how the existence of an international court will invite the codification of certain spheres of international law. I use that term advisedly because it is a tremendous undertaking to codify the whole body of international law, nor is it certain that it is advisable so to do: it may become too rigid.

Now, that project of the Second Hague Conference, the Court of Arbitral Justice, was accepted by the forty-four nations participating in the conference. It was indorsed in 1912 by the Institute of International Law. It has been supported earnestly by all the powers, including Germany, France, and England; and every lawyer, every man who feels what justice means, approves of it. There is no difference of opinion as to the desirability of putting it into effect.

The name of the proposed court, the Court of Arbitral Justice, is misleading. The word "arbitral" does not belong there. It was put in because Germany insisted on its being there. The word "court" carries with it the idea of obligation. When a court in municipal law renders a decision, usually an obligation goes with it. Germany was not ready for anything obligatory in international institutions; therefore her demand. But a true court of justice is none the less provided for by the convention.

In 1910 a society known as the American Society for Judicial

Settlement of International Disputes was formed to promote this court. The society has had four annual meetings, the proceedings of which have appeared in four substantial volumes. Besides, it publishes a quarterly usually limited to one article on the subject by some prominent man. The Proceedings have been translated, have been liberally quoted by foreign publicists, and have made a profound impression upon public opinion not only here but in other countries. The distinguished foreign minister of The Netherlands, Jonkheer Loudon, said we had demonstrated the feasibility and the necessity for this world court.

Now, conjointly with this project there is in the minds of many of us a desire to have the world go a step farther and introduce the element of obligation.

Mr. Hamilton Holt is one of the principal advocates of this latter idea, which is nothing less than a league of peace. The subject was put forward by him in September in *The Independent.* Then he came forward with the suggestion that we should have a public conference. We first got together a group of about twenty scientific men, professors of political science, of international law, of history, of economics, threw the subject into the arena and had it torn to pieces by them at three meetings held at the Century Club in New York. In this way was worked out what we regarded as a "desirable" plan. We then took this "desirable" plan and on April ninth laid it before men of wide practical experience, including Mr. Taft, and Mr. A. Lawrence Lowell, in order to ascertain how much of it was, in their opinion, a "realizable" project. It was found that they were not ready to accept as realizable the whole of the plan of the first group, which was practically this: a league of peace which shall bind its members to resort to a tribunal for the settlement of all disputes to which a member of the league may be a party, and obligate them to use force, if necessary, both to bring the nation law-breaker into court and to execute the verdict of the court.

When the element of force is introduced in a plan it is found that the unanimity of opinion to which I have referred as applying to the Court of Arbitral Justice as at present proposed, and to similar purely voluntary institutions, no longer exists; that there is very great diversity of opinion as to whether force should be used against a nation under any circumstances. The reason for this

diversity of opinion is the shortcomings of the leagues of the past. The Quadruple Alliance, the Grand Alliance, and the Holy Alliance, all formed immediately after the Napoleonic wars, were by no means wholly beneficial. The Holy Alliance, set up between Prussia, Russia, and Austria in 1815, ostensibly to promote Christianity, but really to support dynasties and combat the democratic tendency of the times, operated in fact to suppress liberty in Hungary, in Italy, and in Spain. It was the Holy Alliance acting through France as a mandatory which overthrew the liberal form of government in Spain and restored full autocratic powers to the king. Then there were the partial successes and many failures of the Concert of Europe. The Concert of Europe has done some good things. It smashed the Turkish fleet in 1827 and liberated Greece. It has prevented more than one Balkan war. It has improved the lot of the Armenians in Turkey. But it has had many failures, this present disastrous war the most conspicuous of them. Then there were these groups like the Triple Alliance and the Triple Entente, which, though set up for purposes of peace, have really given to the present war its broad character. All of us felt that, owing to their existence, when war came again to Europe it must be a general war. The breaking out of the war surprised many people; its extent surprised no one.

Manifestly, then, the first step in planning a league of peace is to find out why the leagues of the past have failed. I think the answer lies in one thing: the narrowness of the group composing the league, permitting of the triumph of selfish interests, permitting of collusion, the swapping of favors, and resulting in injustice and oppression. That is what men fear.

Now, many of us believe that if we can set up a league so broad as to include all the progressive nations, big and little, it will be permanent and successful. Such a league would include the eight great nations of the world, among them the United States and Japan. It would include the secondary powers of Europe—Switzerland, Norway and Sweden, Denmark, Belgium (such as it was and such as it will be again), Spain, Greece, and, in fact, all the countries of Europe with the possible exception of some of the Balkan states and the certain exception of Turkey. The "ABC" countries of South America would also be included. It would not include the backward countries, because we feel that the country which cannot

maintain law and order within its own borders would bring no strength to the league.

We believe that such a group would be successful. In the first place, it would embrace three great nations with common political ideals—England, France, and the United States. These three peoples feel that democratic government is no longer a passing phase of political experiment but a permanent fact in politics. Therefore they would cling together. Then you have in the group two great nations—Great Britain and the United States—who may be said to be satisfied territorially; you have the secondary powers of Europe who have no disturbing ambitions and whose voice would be for reason and justice, so that we think that if we could get these states associated together in a league, substantial justice would emerge, just as substantial justice results from the united action of the forty-eight states composing the American Union.

Whether you believe this league is practical or not depends on your answer to the question whether justice would emerge from its united action. Unless it does justice it cannot endure. Unless it does justice we don't want it: we don't want oppression. Injustice within a country—persistent injustice—sooner or later brings war; if not civil war then foreign war, or both; just as gross injustice in the conduct of a war will draw into the struggle an ever-widening circle of nations, because there are irresistible forces which insist that justice shall emerge finally in the world.

Now, it was not proposed that this league should itself pass upon disputes. All it would do is to insist that members, party to the league, or any nation having a dispute with a member of the league, shall not resort to war. It may refer the disputants to existing institutions at The Hague or to other institutions to be hereafter set up. They shall be privileged to go on with their dispute indefinitely if they choose, but they may not resort to war. The United States, under this plan, would have been permitted to continue the Fisheries dispute with Great Britain, as it did, for three-quarters of a century without interference; but if either Great Britain or the United States had shown a disposition to resort to arms the league would have been invoked and would have used its combined forces to prevent aggression.

There are four ideas or stages in the conception. The first is simply a true court of justice to which nations may refer their dis-

putes, if they see fit to do so. This is the court called for by the Hague Convention of 1907 under the name of the Court of Arbitral Justice—simply a voluntary institution. To this institution we find no objectors. Practically all the governments of the world have endorsed it, peoples have endorsed it, experts and plain men have endorsed it. In other words, it is a realizable project. It is therefore well to keep the movement for a world court quite distinct.

Now, the second stage of the larger and more problematic project is a league in which the element of obligation enters to this extent, that the members of the league, if you call it such—parties to the treaty—should obligate themselves to resort to the court. There is no such obligation embodied in the present Hague Convention. Like all our other international institutions, it is there for the nations to use or not, as they like.

In the third stage, the element of obligation is extended to forcing the nations into court. That is to say, if war threatens, we say to the disputants, "You must refer this dispute to the court. We will not force you to carry out the award nor do you bind yourself to do so, but you must go into court and have a hearing."

Now, many men have come to realize that publicity is three-quarters of the battle for justice. Very often simply bringing out the facts stops not only illegal practices, but also unjust practices not covered by the law, and does it without resort to a court or even to arbitration.

The fourth stage is enforcing the award, admittedly giving rise to the danger of oppression unless you have all the progressive nations in the league so that substantial justice would result from its action. The meeting of April ninth, to which I have referred, was unwilling to accept the fourth stage of this plan, namely, enforcing the verdict. Men like Mr. Taft, with his wide experience, Mr. Lowell, who has made a study of governmental institutions, in fact all except two out of the twenty eminent and experienced men gathered at that meeting, were, however, willing to adopt the first three stages of the plan as a "realizable" project, namely, the court, the obligations of the states to each other to go into court, and the obligation of the League to force the nation law-breaker into court if recalcitrant.

If there is no obligation on the part of the nation entering the court to abide by the verdict and the league itself will not enforce

the verdict, surely no oppression can result from the demand for a hearing. It is a reasonable demand as applied to any controversy whatsoever, whether it be a justiciable controversy or a controversy arising out of a conflict of political policies. The league would simply act as an international grand jury to hale the nation law-breaker into court for a hearing. That is as far as the meeting of April ninth was willing to go, and that is the project which the notable gathering at Independence Hall, Philadelphia, on June seventeenth, made the program of the League to Enforce Peace. By starting with this minor project we get something which is practicable and out of the minor project, the larger plan may grow of its own accord.